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14 Attorneys for Plaintiffs And The Proposed Class

15
 16 UNITED STATES DISTRICT COURT
 17 CENTRAL DISTRICT OF CALIFORNIA

18 DEREK GRIFFITHS, an individual, on
 behalf of himself and all others
 19 similarly situated; JIM TOWERY, an
 individual, on behalf of himself and all
 20 similarly situated; MAARTEN
 VERHOEVEN, an individual, on behalf
 21 of himself and all similarly situated;
 PATRICIA COTTINGTON, an
 22 individual, on behalf of herself and all
 similarly situated; RYAN
 23 CALDERON, an individual, on behalf
 of himself and all similarly situated,

24 Plaintiffs,

25 vs.

26 LUMBER LIQUIDATORS, INC., a
 27 Delaware corporation,

28 Defendant.

Case No. 2:15-cv-1783

**CLASS ACTION COMPLAINT
 FOR DAMAGES AND
 INJUNCTIVE RELIEF FOR:**

1. Violations of the Unfair Competition Law (Cal. Bus. & Prof. Code § 17200 et seq.);
2. Violations of the False Advertising Law (Cal. Bus. & Prof. Code § 17500);
3. Violation of Consumer Legal Remedies Act (Cal. Civ. Code § 1750);
4. Fraudulent Concealment; and
5. Breach of Implied Warranty.

DEMAND FOR A JURY TRIAL

1 Plaintiffs DEREK GRIFFITHS, JIM TOWERY, MAARTEN VERHOEVEN,
 2 PATRICIA COTTINGTON and RYAN CALDERON (collectively, "Plaintiffs"), by
 3 and through their attorneys, bring this action on behalf of themselves and all others
 4 similarly situated against Defendant LUMBER LIQUIDATORS, INC.
 5 ("Defendant"). Plaintiffs hereby allege, on information and belief, except as to
 6 those allegations that pertain to the named Plaintiffs, which allegations are based on
 7 personal knowledge, as follows:

8 INTRODUCTION

9 1. Since 1988, the State of California has recognized that formaldehyde
 10 gas is a chemical known to cause cancer. By 1992, the California Air Resources
 11 Board ("CARB") had formally listed formaldehyde as a contaminant with no safe
 12 level of exposure.

13 2. Certain building materials, including laminate flooring, are processed
 14 in a way that introduces formaldehyde into the material during manufacturing. In
 15 response, the CARB has passed regulations limiting the amount of formaldehyde
 16 that may be present. Specifically, the California Code of Regulations, title 17,
 17 (which addresses public health), sections 93120 through 93120.12 are known as the
 18 Airborne Toxic Control Measure to Reduce Formaldehyde Emissions from
 19 Composite Wood Products ("CARB Regulations"). The regulations apply to
 20 anyone who manufactures, distributes, imports, sells, or supplies the designated
 21 materials in California.

22 3. Defendant is a corporation that distributes, markets, and/or sells
 23 laminate wood flooring products in California that are subject to 17 California Code
 24 of Regulations sections 93120 through 93120.12.

25 4. Defendant supervises and controls the manufacturing of its laminate
 26 wood flooring that takes place in China. Laminate wood flooring consists of a core
 27 of pressed wood [commonly referred to as medium-duty fiberboard ("MDF")],
 28 which is made up of wood particles bonded together with glue or resin, a high

1 quality photographic image of wood, and a scratch resistant coating. On
 2 information and belief, urea-formaldehyde resin is used to bond the wood particles
 3 together in the MDF core of laminate flooring.

4 5. For at least the last two years, certain laminate wood flooring
 5 (“Formaldehyde Flooring”) manufactured, distributed, sold, and/or controlled by
 6 Defendant has contained formaldehyde in excess of the levels allowed under the
 7 CARB Regulations (“Design Defect”). On information and belief, Plaintiffs allege
 8 that Defendant’s Formaldehyde Flooring, includes, but may not be limited to, the
 9 following products:

- 10 a. 8 mm Bristol County Cherry Laminate Flooring;
- 11 b. 8 mm Dream Home Nirvana French Oak Laminate Flooring;
- 12 c. 8 mm Dream Home Nirvana Royal Mahogany Laminate
 13 Flooring;
- 14 d. 12 mm Dream Home Ispiri America's Mission Olive Laminate
 15 Flooring;
- 16 e. 12 mm Dream Home Ispiri Chimney Tops Smoked Oak
 17 Laminate Flooring;
- 18 f. 12 mm Dream Home Ispiri Poplar Forest Oak Laminate
 19 Flooring;
- 20 g. 12 mm Dream Home Kensington Manor Antique Bamboo
 21 Laminate Flooring;
- 22 h. 12 mm Dream Home Kensington Manor Cape Doctor Laminate
 23 Flooring;
- 24 i. 12 mm Dream Home Kensington Manor Fumed African
 25 Ironwood Laminate Flooring;
- 26 j. 12 mm Dream Home Kensington Manor Glacier Peak Poplar
 27 Laminate Flooring;
- 28 k. 12 mm Dream Home Kensington Manor Golden Teak Laminate

- 1 Flooring;
- 2 l. 12 mm Dream Home Kensington Manor Handscraped Imperial
- 3 Teak Laminate Flooring (SKU 10029601);
- 4 m. 12 mm Dream Home Kensington Manor Handscraped Imperial
- 5 Teak Laminate Flooring (SKU 10023958);
- 6 n. 12 mm Dream Home Kensington Manor Handscraped Summer
- 7 Retreat Teak Laminate Flooring;
- 8 o. 12 mm Dream Home Kensington Manor Sandy Hills Hickory
- 9 Laminate Flooring;
- 10 p. 12 mm Dream Home Kensington Manor Tanzanian Wenge
- 11 Laminate Flooring;
- 12 q. 12 mm Dream Home Kensington Manor Warm Springs Chestnut
- 13 Laminate Flooring;
- 14 r. 12 mm Dream Home St. James African Mahogany Laminate
- 15 Flooring;
- 16 s. 12 mm Dream Home St. James Blacksburg Barn Board Laminate
- 17 Flooring;
- 18 t. 12 mm Dream Home St. James Brazilian Koa Laminate
- 19 Flooring;
- 20 u. 12 mm Dream Home St. James Chimney Rock Charcoal
- 21 Laminate Flooring;
- 22 v. 12 mm Dream Home St. James Cumberland Mountain Oak
- 23 Laminate Flooring;
- 24 w. 12 mm Dream Home St. James Golden Acacia Laminate
- 25 Flooring;
- 26 x. 12 mm Dream Home St. James Nantucket Beech Laminate
- 27 Flooring;
- 28 y. 12 mm Dream Home St. James Oceanside Plank Bamboo

1 Laminate Flooring;

2 z. 12 mm Dream Home St. James Vintner's Reserve Laminate
3 Flooring; and

4 aa. 15 mm Dream Home St. James Sky Lakes Pine Laminate
5 Flooring.

6 bb. Morning Star Bamboo Flooring

7 6. Defendant supervises and/or controls the manufacturing and packaging
8 of Formaldehyde Flooring in China that Defendant then distributes, markets, and/or
9 sells in California.

10 7. Plaintiffs bring this class action on behalf of themselves and all others
11 similarly situated, asserting claims under California's Unfair Competition Law, Cal.
12 Bus. & Prof. Code § 17200, et seq. ("UCL" or "§17200"); the Consumer Legal
13 Remedies Act, Cal. Civ. Code § 1750, et seq. ("CLRA"); False Advertising in
14 Violation of Cal. Bus & Prof. Code § 17500, et seq.; fraudulent concealment; and
15 breach of implied warranty. Plaintiffs seek damages and equitable relief on behalf
16 of the Class, which relief includes but is not limited to the following: providing class
17 members with safe laminate wood flooring products, or if no such product exists, to
18 refund Plaintiffs and class members the full amount paid for Formaldehyde Flooring
19 and the cost to remove the Formaldehyde Flooring; costs and expenses, including
20 attorneys' fees and expert fees; injunctive relief and declaratory relief; and any
21 additional relief that this Court determines to be necessary to provide complete relief
22 to Plaintiffs and the Class.

23 **PARTIES**

24 8. Plaintiff Derek Griffiths resides in Northridge, California.

25 9. Plaintiff Jim Towery resides in Indian Wells, California.

26 10. Plaintiff Maarten Verhoeven resides in San Luis Obispo, California.

27 11. Plaintiff Patricia Cottington resides in Fresno, California.

28 12. Plaintiff Ryan Calderon resides in Ladera Ranch, California.

13. Plaintiffs purchased Formaldehyde Flooring believing it to be reasonably safe to use for the purpose for which they were intended.

14. Defendant Lumber Liquidators, Inc. is a Delaware corporation with its headquarters and principal place of business in Toano, Virginia. Defendant conducts substantial business in the State of California and in the County of Los Angeles.

JURISDICTION AND VENUE

15. This Court has subject matter jurisdiction over this action under the Class Action Fairness Act of 2005, 28 U.S.C. §1332(d)(2) ("CAFA"), in that the matter is a class action wherein the amount in controversy exceeds the sum or value of \$5,000,000, exclusive of interest and costs, and members of the Class are citizens of a state different from the Defendant.

16. This Court has personal jurisdiction over the parties in this action by the fact that Defendant is a corporation that is authorized to conduct business in California and it has intentionally availed itself of the laws and markets of California through the promotion, marketing, distribution and sale of its laminate wood flooring products. Each named Plaintiff purchased their Formaldehyde Flooring in California.

17. Venue is proper in this District pursuant to 28 U.S.C. §1391(b), because a substantial part of the events or omissions giving rise to Plaintiffs' claims occurred in this District. Venue is also proper under 18 U.S.C. §1965(a), because Defendant transacts a substantial amount of its business in this District. Plaintiffs are filing concurrently herewith an affidavit stating facts showing that this action has been commenced in a proper county pursuant to California Civil Code section 1780(c).

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FACTUAL ALLEGATIONS

18. On or about November, 23, 2014, Plaintiff DEREK GRIFFITHS purchased St. James 12mm Burnet Road Russet laminate flooring from a Lumber Liquidators' store located at 16735 Roscoe Boulevard, North Hills, California. The label on the packaging read, inter alia: "CARB CALIFORNIA 93120 PHASE 2 Compliant for Formaldehyde."

19. On or about August 25, 2013, Plaintiff JIM TOWERY purchased Morning Star ½" x 5" Strand Natural Click Bamboo flooring from Lumber Liquidators' Palm Desert Store No. 174 for a total purchase price of \$4,008.82. Further, JIM TOWERY paid a professional the sum of \$2,338.30 to install this flooring. The label on the packaging read, inter alia: "CARB NO. SCS-09-0015 [¶] CALIFORNIA 93120 PHASE 2 Compliant for Formaldehyde".

20. On or about October 13, 2014, Plaintiff MAARTEN VERHOEVEN purchased Kensington Manor Sandy Hills Hickory 12mm laminate flooring from Lumber Liquidators' San Luis Obispo Store No. 194, located at 170 Suburban Road, Suite 130, San Luis Obispo, California for the purchase price of \$1,265.01. The label on the packaging read, inter alia: "CARB CALIFORNIA 93120 PHASE 2 Compliant for Formaldehyde".

21. On or about August 9, 2014, Plaintiff PATRICIA COTTINGTON purchased Kensington Manor Warm Springs Chestnut 12mm laminate flooring from the Lumber Liquidators' store located at 2955 S. Orange, Fresno, California for a purchase price of \$1,440. The label on the packaging read, inter alia, "CARB No. SCS-CARB-000090, California 93120 Phase 2 Compliant for Formaldehyde."

22. On or about July 2012, Plaintiff RYAN CALDERON purchased Kensington Manor Imperial Teak 12mm laminate flooring from Lumber Liquidators' Santa Ana store. The label on the packaging read, inter alia, "CARB No. SCS-09-0015, California 93120 PHASE 2 Compliant for Formaldehyde."

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23. Despite the fact that the Formaldehyde Flooring fails to meet California's requirements for formaldehyde emissions, Defendant has made numerous representations to the contrary.

24. Defendant's website leads consumers to believe that its laminate wood flooring products comply with the CARB formaldehyde standards when they do not. The website states as follows:

Is Lumber Liquidators Compliant with the California law?

Laminate and engineered flooring products sold by Lumber Liquidators are purchased from mills whose production method has been certified by a Third Party Certifier approved by the State of California to meet the CARB standards. The scope of the certification by the Third Party Certifier includes the confirmation that the manufacturer has implemented the quality systems, process controls, and testing procedures outlined by CARB and that their products conform to the specified regulation limits. The Third Party Certifier also provides ongoing oversight to validate the manufacturers' compliance and manufacturers must be periodically re-certified.

Does CARB only apply to California?

Though it currently applies only to products sold in California, **Lumber Liquidators made a decision to require all of our vendors to comply with the California Air Resources Board regulations regardless of whether we intended** to sell the products in California or any other state/country.

What extra steps does Lumber Liquidators take to ensure compliance?

In addition to the California Air Resources Board requirements, Lumber Liquidators regularly selects one or more finished products from each of its suppliers and submits them for independent third-party lab testing. This is done as a monitoring activity to validate ongoing quality control.

25. After the dangerous formaldehyde levels in Lumber Liquidators' products was featured on the CBS News program "60 Minutes," Lumber

1 Liquidators responded by posting a letter from its Chairman on its website stating:

2 Let me make one thing very clear – our laminate products, all of our products,
3 are 100% safe.

4 ...

5 We comply with applicable regulations regarding our products, including
6 California standards for formaldehyde emissions for composite wood
7 products – the most stringent rules in the country. We take our commitment to
8 safety even further by employing compliance personnel around the world and
9 utilizing the latest in cutting- edge technology to provide our customers with
10 top quality and high value flooring.

11 26. Moreover, the product packaging for Defendant's laminate wood
12 flooring states: "CARB . . . CALIFORNIA 93120 Phase 2 Compliant for
13 Formaldehyde." On information and belief, this statement is presented on all of
14 Defendant's laminate flooring product packaging regardless of whether the flooring
15 inside the packaging complies with the CARB standards.

16 27. On information and belief, at all times relevant to this action,
17 Defendant has knowingly misrepresented its laminate wood flooring products as
18 CARB compliant and knowingly failed to disclose to consumers the unlawful levels
19 of formaldehyde emissions from its laminate wood flooring products

20 28. Plaintiffs did not discover, nor would a reasonable consumer have had
21 reason to suspect that Defendant knowingly misrepresented its laminate wood
22 flooring products as CARB compliant and knowingly failed to disclose to
23 consumers the unlawful levels of formaldehyde emissions from its laminate wood
24 flooring products until March 1, 2015, when the "60 Minutes" report publicized it.

25 29. Plaintiffs have suffered injury in fact and loss of money or property.
26 They have been damaged in the amount they paid for Formaldehyde Flooring.
27 Moreover, if no safe replacement laminate wood flooring product exists, Plaintiffs
28 have suffered damages in the amount of the full price they paid for Formaldehyde

1 Flooring and the cost to remove Formaldehyde Flooring and installation for
 2 replacement flooring. In the event safe replacement laminate wood flooring exists,
 3 Plaintiffs' damages are the cost of replacing the defective Formaldehyde Flooring
 4 with safe laminate wood flooring.

5 CLASS ALLEGATIONS

6 30. This action may properly be maintained as a class action pursuant to
 7 Federal Rules of Civil Procedure Rule 23. The Class is sufficiently numerous, since
 8 it is estimated to include tens of thousands of consumers throughout California, the
 9 joinder of whom in one action is impracticable, and the disposition of whose claims
 10 in a class action will provide substantial benefits to the parties and the Court.

11 31. Class Definition: Without prejudice to later revisions, the Class which
 12 Plaintiffs seeks to represent is composed of: all consumers who purchased
 13 Formaldehyde Flooring in California from the time of their introduction in the
 14 marketplace through and including the date of class notice (the "Class"). Excluded
 15 from the Class are Defendant, its affiliates, employees, officers and directors,
 16 persons or entities that distribute or sell Formaldehyde Flooring, the Judge(s)
 17 assigned to this case, and the attorneys of record in this case.

18 32. Throughout discovery in this litigation, Plaintiffs may find it
 19 appropriate and/or necessary to amend the definition of the Class. Plaintiffs reserve
 20 the right to amend the Class definitions if discovery and further investigation reveal
 21 that the Class should be expanded or otherwise modified.

22 33. Ascertainable Class: While Plaintiffs do not know the exact number
 23 and identity of all class members, Plaintiffs are informed and believe that there are
 24 tens, if not hundreds, of thousands of class members. The precise number of
 25 members can be ascertained through discovery, which will include Defendant's
 26 sales, service and other business records.

27 34. Common Questions of Law and Fact Predominate: There is a well-
 28 defined community of interest among the Class. The questions of law and fact

1 common to the Class predominate over questions that may affect individual Class
 2 Members. These questions of law and fact include, but are not limited to, the
 3 following:

- 4 a. Whether Defendant exercised reasonable care in testing its
- 5 Formaldehyde Flooring prior to its release for commercial sale;
- 6 b. Whether Defendant's Formaldehyde Flooring is defective when
- 7 used as directed, intended or in a reasonably foreseeable manner;
- 8 c. Whether feasible alternative safer formulations of the
- 9 Formaldehyde Flooring were available;
- 10 d. Whether Defendant's Formaldehyde Flooring was fit for its
- 11 intended purpose;
- 12 e. Whether Defendant has breached the implied warranty of fitness
- 13 for a particular purpose;
- 14 f. Whether Defendant has breached the implied warranty of
- 15 merchantability;
- 16 g. Whether Defendant has acted negligently;
- 17 h. Whether Defendant knew that the Formaldehyde Flooring were,
- 18 and are, materially defective;
- 19 i. Whether Defendant omitted and concealed material facts from its
- 20 communications and disclosures to Plaintiffs regarding the
- 21 design defects inherent in the Formaldehyde Flooring;
- 22 j. Whether Defendant breached its express and/or implied
- 23 warranties;
- 24 k. Whether Defendant is strictly liable to Plaintiffs and the class;
- 25 l. Whether Defendant failed to warn Plaintiffs and the class;
- 26 m. Whether Defendant has violated the UCL;
- 27 n. Whether Defendant has violated the CLRA;
- 28 o. Whether Defendant has received funds from Plaintiffs and class

1 members that it unjustly received;

2 p. Whether Plaintiffs and proposed class members have been
3 harmed and the proper measure of relief;

4 q. Whether Plaintiffs and proposed class members are entitled to an
5 award of punitive damages, attorneys' fees and expenses against
6 Defendant; and

7 r. Whether, as a result of Defendant's misconduct, Plaintiffs are
8 entitled to equitable relief, and if so, the nature of such relief.

9 35. Numerosity: The Class is so numerous that the individual joinder of all
10 members of the Class is impractical under the circumstances of this case. While the
11 exact number of members of the Class is unknown to Plaintiffs at this time,
12 Plaintiffs are informed and believe the Class consists of thousands of persons.
13 Individual joinder of Members of the Class is also impracticable because the
14 individual Members are dispersed throughout California.

15 36. Typicality: Plaintiffs' claims are typical of the claims of the members
16 of the proposed class. Plaintiffs and all class members have been injured by the
17 same wrongful practices of Defendant. Plaintiffs' claims arise from the same
18 practices and conduct that give rise to the claims of all class members and are based
19 on the same legal theories.

20 37. Adequacy: Plaintiffs will fairly and adequately represent and protect
21 the interests of the Class in that they have no disabling conflicts of interest that
22 would be antagonistic to those of the other members of the Class. Plaintiffs seek no
23 relief that is antagonistic or adverse to the members of the Class and the
24 infringement of the rights and the damages they have suffered are typical of all other
25 Class Members. Plaintiffs have retained attorneys experienced in consumer class
26 actions and complex litigation as counsel.

27 38. Superiority: The disposition of Plaintiffs' and proposed class
28 members' claims in a class action will provide substantial benefits to both the

1 parties and the Court. The nature of this action and the nature of laws available to
2 Plaintiffs and the Class make the use of the class action device a particularly
3 efficient and appropriate procedure to afford relief to Plaintiffs and the Class for the
4 wrongs alleged because:

- 5 a. The individual amounts of damages involved, while not
6 insubstantial, are such that individual actions or other individual
7 remedies are impracticable and litigating individual actions
8 would be too costly;
- 9 b. If each Class Member was required to file an individual lawsuit,
10 the Defendant would necessarily gain an unconscionable
11 advantage since they would be able to exploit and overwhelm the
12 limited resources of each individual Class Member with vastly
13 superior financial and legal resources;
- 14 c. The costs of individual suits could unreasonably consume the
15 amounts that would be recovered;
- 16 d. Given the size of individual proposed class member's claims and
17 the expense of litigating those claims, few, if any, proposed class
18 members could afford to or would seek legal redress individually
19 for the wrongs Defendant committed against them and absent
20 proposed class members have no substantial interest in
21 individually controlling the prosecution of individual actions;
- 22 e. This action will promote an orderly and expeditious
23 administration and adjudication of the proposed class claims,
24 economies of time, effort and resources will be fostered and
25 uniformity of decisions will be insured; and
- 26 f. Without a class action, proposed class members will continue to
27 suffer damages, and Defendant's violations of law will proceed
28 without remedy while Defendant continues to reap and retain the

1 substantial proceeds of its wrongful conduct.

2 g. Plaintiffs know of no difficulty that will be encountered in the
3 management of this litigation that would preclude its
4 maintenance as a class action.

5 h. Proof of a common business practice or factual pattern which
6 Plaintiffs experienced is representative of that experienced by the
7 Class and will establish the right of each member of the Class to
8 recover on the causes of action alleged; and

9 i. Individual actions would create a risk of inconsistent results and
10 would be unnecessary and duplicative of this litigation.

11 39. Plaintiffs and Class Members have all similarly suffered irreparable
12 harm and damages as a result of Defendant's unlawful and wrongful conduct. This
13 action will provide substantial benefits to Plaintiffs, the Class and the public
14 because, absent this action, Plaintiffs and Class Members will continue to suffer
15 losses, thereby allowing Defendant's violations of law to proceed without remedy
16 and allowing Defendant to retain proceeds of its ill-gotten gains.

17 **FIRST CAUSE OF ACTION**

18 **Violations of the Unfair Competition Law**

19 **(Cal. Bus. & Prof. Code § 17200 et seq.)**

20 40. Plaintiffs and the Class incorporate by reference each and every
21 preceding paragraph of this Complaint as if fully set forth herein.

22 41. The acts, omissions, and practices of Defendant as alleged herein
23 constituted, and continue to constitute, unlawful and unfair business acts and
24 practices within the meaning of Section 17200, et seq. of the California Business &
25 Professions Code. Plaintiffs have standing to bring this action under Business &
26 Professions Code § 17200 because they have suffered injury in fact and have lost
27 money because of the Defendant's conduct.

28 ///

1 42. Defendant has engaged in “unlawful” business acts and practices by its
2 violation of the statutes and regulations, referenced above, including, but not limited
3 to: California Business & Professions Code section 17200, et seq.; California
4 Business & Professions Code section 17500, et seq.; California Civil Code section
5 1750, et seq.; and California common law that prohibits fraudulent concealment and
6 breaches of implied warranty.

7 43. Defendant has also engaged in “unfair” business acts or practices in
8 that the harm caused by Defendant's manufacture, sale, distribution, and or control
9 over its Formaldehyde Flooring outweighs the utility of such conduct and the
10 conduct offends public policy, is immoral, unscrupulous, unethical, deceitful and
11 offensive, causes substantial injury to Plaintiffs and the Class, and provides
12 Defendant with an unfair competitive advantage over those companies that abide by
13 the law.

14 44. Defendant's actions described herein constitute fraud within the
15 meaning of California Business and Professions Code section 17200, et seq. in that
16 Defendant has failed to disclose that the Formaldehyde Flooring contains the Design
17 Defect. Defendant's failure to disclose the Design Defect was likely to mislead
18 Plaintiffs and the Class into believing that the Formaldehyde Flooring was free from
19 defect and safe to use.

20 45. As a result of the conduct described above, Defendant has been and
21 will be unjustly enriched at the expense of Plaintiffs and the Class.

22 46. The aforementioned unlawful or unfair business acts or practices
23 conducted by Defendant has been committed in the past and continues to this day.
24 Defendant has failed to acknowledge the wrongful nature of its actions. Defendant
25 has not corrected or publicly issued individual and comprehensive corrective notices
26 to Plaintiffs and the Class or provided full restitution and disgorgement of all ill-
27 gotten monies either acquired or retained by Defendant as a result thereof, thereby
28 depriving Plaintiffs and the Class of laminate wood flooring that does not have an

1 unreasonable risk of harm for personal injury.

2 47. Pursuant to the Business & Professions Code section 17203, Plaintiffs
3 and the Class seek an order of this Court requiring Defendant to disgorge all ill-
4 gotten gains and awarding Plaintiffs and the Class full restitution of all monies
5 wrongfully acquired by Defendant by means of such “unlawful” and “unfair”
6 conduct, plus interest and attorneys’ fees pursuant to, inter alia, California Code of
7 Civil Procedure section 1021.5, so as to restore any and all monies to Plaintiffs and
8 the Class and the general public, which were acquired and obtained by means of
9 such “unlawful” and “unfair” conduct, and which ill-gotten gains are still retained
10 by Defendant. Plaintiffs and the Class additionally request that such funds be
11 impounded by the Court or that an asset freeze or constructive trust be imposed
12 upon such monies by Defendant. Plaintiffs and the Class may be irreparably harmed
13 and/or denied an effective and complete remedy if such an order is not granted.

14 **SECOND CAUSE OF ACTION**

15 **Violations of the False Advertising Law (Cal. Bus. & Prof. Code § 17500)**

16 48. Plaintiffs and the Class incorporate by reference each and every
17 preceding paragraph of this Complaint as if fully set forth herein.

18 49. California Business & Professions Code section 17500 prohibits
19 various deceptive practices in connection with the dissemination in any manner of
20 representations that are likely to deceive members of the public to purchase products
21 such as the Formaldehyde Flooring.

22 50. Defendant caused advertisements for Formaldehyde Flooring to be
23 placed on its website and on product packaging, among other sources, before the
24 general public and knew or should have known that Formaldehyde Flooring did not
25 conform to the advertisements’ representations regarding the safety of the product.

26 51. As a result of the foregoing, Plaintiffs, and other Class members, and
27 consumers are entitled to injunctive and equitable relief and damages in an amount
28 to be proven at trial.

THIRD CAUSE OF ACTION

Violation of Consumer Legal Remedies Act (Cal. Civ. Code § 1750)

52. Plaintiffs and the Class incorporate by reference each and every preceding paragraph of this Complaint as if fully set forth herein.

53. This cause of action arises under the Consumers Legal Remedies Act (“CLRA”), Cal. Civ. Code § 1750 et seq. Plaintiffs are consumers as defined by California Civil Code section 1761(d). Defendant’s Formaldehyde Flooring constitutes “goods” as defined by California Civil Code section 1761(a). At all times relevant hereto, Defendant constituted a “person” as that term is defined in California Civil Code section 1761(a), and Plaintiffs’ and class members’ purchases of Formaldehyde Flooring constituted “transactions,” as that term is defined in California Civil Code section 1761(b).

54. Defendant violated and continues to violate the CLRA by engaging in the following deceptive practices specifically proscribed by California Civil Code section 1770(a), in transactions with Plaintiffs and class members that were intended to result or which resulted in the sale or lease of goods or services to consumers:

- a. In violation of California Civil Code section 1770(a)(5), Defendant’s acts and practices constitute misrepresentations that the Formaldehyde Flooring in question has characteristics, benefits or uses which they do not have;
- b. In violation of California Civil Code section § 1770(a)(7), Defendant has misrepresented that the Formaldehyde Flooring in question is of particular standard, quality and/or grade, when they are of another; and
- c. In violation of California Civil Code section 1770(a)(9), Defendant advertised the Formaldehyde Flooring in question with the intent not to sell them as advertised or represented.

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1 55. Defendant has made uniform representations that its Formaldehyde
2 Flooring is a high-quality product that will perform as represented. These
3 representations, as set forth above, were false, deceptive, and/or misleading and in
4 violation of the CLRA.

5 56. Pursuant to California Civil Code section 1782, Plaintiffs will notify
6 Defendant in writing by certified mail of the particular violations of California Civil
7 Code section 1770 alleged herein, and have demanded that Defendant rectify the
8 problems associated with the actions detailed above and give notice to all affected
9 consumers of its intent to so act. Plaintiffs sent this notice by certified mail, return
10 receipt requested, to Defendant's principal place of business.

11 57. If Defendant fails to rectify or agree to rectify the problems associated
12 with the actions detailed above and give notice to all affected consumers within 30
13 days after receipt of the California Civil Code section 1782 notice, Plaintiffs will
14 seek actual damages and punitive damages for violation of the Act. In addition,
15 pursuant to California Civil Code section 1780(a)(2), Plaintiffs will be entitled to,
16 and therefore seek, a Court order enjoining the above-described wrongful acts and
17 practices that violate California Civil Code section 1770.

18 58. Plaintiffs and the class will also be entitled to recover attorneys' fees,
19 costs, expenses and disbursements pursuant to California Civil Code sections 1780
20 and 1781.

21 **FOURTH CAUSE OF ACTION**

22 **Fraudulent Concealment**

23 59. Plaintiffs and the Class incorporate by reference each and every
24 preceding paragraph of this Complaint as if fully set forth herein.

25 60. Defendant advertised and/or marketed its Formaldehyde Flooring to be
26 safe, of good quality free from defects, and that they would perform in their
27 reasonably expected operation and/or use for their full useful lives. Defendant
28 failed to disclose that its Formaldehyde Flooring contained a Design Defect, as

1 described above, and that the Design Defect posed a serious risk of personal injury.
2 These facts were not known to Plaintiffs and the Class.

3 61. Alternatively, Defendant intentionally failed to disclose the fact that its
4 Formaldehyde Flooring contained a Design Defect, a fact that was only known to
5 Defendant, and Plaintiffs and the Class could not have discovered it. Plaintiffs are
6 informed and thereon believe that Defendant knew of the Design Defect from its
7 performance of standard testing prior to placing the Formaldehyde Flooring into the
8 stream of commerce.

9 62. Plaintiffs and the Class reasonably relied and continue to rely upon
10 Defendant to sell laminate wood flooring without a Design Defect that causes an
11 unreasonable risk of harm. Defendant knew or ought to have known that Plaintiffs
12 and the Class relied and/or continues to rely upon Defendant to sell laminate wood
13 flooring in which the entire lifetime of the goods could be fully used without an
14 unreasonable risk of harm. Defendant's knowledge that its Formaldehyde Flooring
15 contains a Design Defect combined with Defendant's knowledge that Plaintiffs and
16 the Class relied or relies upon Defendant to communicate the true state of facts
17 relating to its Formaldehyde Flooring creates a legal obligation on Defendant's part
18 to disclose to Plaintiffs and the Class these facts. Defendant is in a superior position
19 to know the truth about, and the nature of, the Formaldehyde Flooring.

20 63. Defendant intended and intends to deceive Plaintiffs and the Class by
21 failing to disclose that the Formaldehyde Flooring contains a Design Defect and is
22 likely to fail in advance of their reasonably expected useful life inasmuch as it
23 causes an unreasonable risk of harm to consumers.

24 64. Defendant's failure to disclose the Design Defect and risk of harm was
25 material. Plaintiffs and the Class would not have purchased the Formaldehyde
26 Flooring had they known of the Design Defect and risk of harm, which is
27 significant, recognizable, real, and demonstrable. Moreover, this same Design
28 Defect, if not remedied, can result in catastrophic personal injury.

65. Plaintiffs and the Class were harmed. As a proximate result of Defendant's conduct as set forth in this cause of action, Plaintiffs and the Class will now be required to remedy the Design Defect, described above, so as to avoid the distinct likelihood that they may suffer personal injury as a result of such Design Defect. In addition, Plaintiffs and the Class members have suffered damages, which include, but are not limited to the cost to repair the Design Defect.

66. Defendant's concealment was a substantial factor in causing that harm.

67. The wrongful conduct of Defendant, as alleged herein, was willful, oppressive, immoral, unethical, unscrupulous, substantially injurious, malicious, and/or in conscious disregard for the wellbeing of Plaintiffs and the Class along with other members of the public that may be personally injured by the excessive levels of Formaldehyde gas emitted from the Formaldehyde Flooring. Defendant intended to cause injury to the Plaintiffs and the Class placing profits over safety. Defendant engaged and continues to engage in despicable conduct with a willful and conscious disregard of the rights or safety of others. Defendant subjected, and continues to subject, Plaintiffs and the Class to cruel and unjust hardship. Accordingly, Plaintiffs and Class members are entitled to an award of punitive damages against Defendant in an amount to deter it from similar conduct in the future.

FIFTH CAUSE OF ACTION

Breach of Implied Warranty

68. Plaintiffs and the Class incorporate by reference each and every preceding paragraph of this Complaint as if fully set forth herein.

69. By placing its Formaldehyde Flooring in the stream of commerce, Defendant impliedly warranted that its Formaldehyde Flooring was reasonably safe for its intended use, i.e., to provide flooring without exposing consumers to excess levels of formaldehyde gas.

70. Defendant's Formaldehyde Flooring is not merchantable. In breach of the implied warranty of merchantability, Defendant's Formaldehyde Flooring fails

1 emits unlawful amounts of Formaldehyde gas.

2 71. Defendant's Formaldehyde Flooring was not reasonably safe for its
3 intended use when it left Defendant's control and entered the market.

4 72. The Formaldehyde Flooring defects were not open and/or obvious to
5 consumers.

6 73. Any purported limitation of the duration and scope of the implied
7 warranty of merchantability given by Defendant is unreasonable, unconscionable
8 and void, because Defendant knew or recklessly disregarded that the defect in the
9 Formaldehyde Flooring existed and might not be discovered, if at all, until the
10 Formaldehyde Flooring had been used for a period of time longer than the period of
11 any written warranty, and Defendant willfully withheld information about the defect
12 from purchasers of Formaldehyde Flooring. Moreover, due to the unequal
13 bargaining power between the parties, Plaintiffs and the class members had no
14 meaningful alternative to accepting Defendant's attempted pro forma limitation of
15 the duration of any warranties.

16 74. As a result, Plaintiffs and proposed class members have been damaged
17 in, inter alia, the amount they paid to purchase and replace Defendant's un-
18 merchantable Formaldehyde Flooring, and if no safe replacement exists, in the
19 amount they paid for their Formaldehyde Flooring.

20 **PRAYER FOR RELIEF**

21 WHEREFORE, Plaintiffs, on behalf of themselves and all other individuals
22 similarly situated, requests the following relief:

- 23 A. That the Court determine that this action may be maintained as a class
24 action under Rule 23;
- 25 B. Injunctive relief prohibiting Defendant from continuing to distribute
26 and/or sell laminate flooring products that violate the CARB standards,
27 pursuant to California Business and Professions Code sections 17203
28 and California Civil Code section 1780;

- 1 C. Restitution of all monies Defendant received from Plaintiffs and the
2 class members based on its violation of California Business and
3 Professions Code section 17200;
4 D. Damages to be determined in at trial including actual, compensatory,
5 and consequential damages incurred by Plaintiffs and class members;
6 E. An award of reasonable attorneys' fees and costs;
7 F. That the Court award such other and further relief as this Court may
8 deem appropriate.

9 DATED: March 11, 2015

ROBERTSON & ASSOCIATES, LLP

11 By: 
12

ALEXANDER ROBERTSON, IV
Attorneys for Plaintiffs

14
15
16 **DEMAND FOR JURY TRIAL**

17 Plaintiffs, on behalf of themselves and all others similarly situated, hereby
18 requests a jury trial on the claims so triable.

19 DATED: March 11, 2015

ROBERTSON & ASSOCIATES, LLP

21 By: 
22

ALEXANDER ROBERTSON, IV
Attorneys for Plaintiffs